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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 904.

A. M. LANDMAN, Superintendent of the Five Civilized Tribes, for Estate of JEANETTA BURGESS, Nee TIGER, Deceased Creek, Roll No. 5069, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

HUSTON THOMPSON,
OSCAR P. MAST,
Washington, D. C.,
Counsel for Petitioner.

January 27, 1942.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Petition	1
Statement	2
Specifications of Error to be Urged	3
Reasons for Granting the Writ	3
Brief in Support of the Petition	5
Opinions Below	5
Jurisdiction	5
Questions Presented	6
Treaties and Statutes Involved	6
Statement of Case	6
Argument	6
An important class case of first impression	6
The question of law involved in this case should be settled by this Court	8
Conclusion	17
Appendix	18

CITATIONS

CASES:

Carpenter v. Shaw, 280 U. S. 363	3, 9, 12, 13, 14
Choate v. Trapp, 224 U. S. 665	3, 9, 12, 13, 14
Choteau v. Burnet, 283 U. S. 691	7, 10
English v. Richardson, 224 U. S. 680	3
Heckman v. United States, 224 U. S. 413	3
Mullen v. United States, 224 U. S. 448	3
Superintendent v. Commissioner, 295 U. S. 418	3, 8, 10, 11, 14, 16
United States v. Santa Fe Pac. R. Co., 62 S. Ct. 248	3

TREATIES:

Treaty of January 24, 1826, 7 Stat. 286.	
Preamble	18
Article 13	18
Treaty of March 24, 1832, 7 Stat. 366.	
Article 14	18

Page

Treaty of February 14, 1833, 7 Stat. 417.
Article 3 19

Treaty of June 14, 1866, 14 Stat. 785.
Article 3 19
Article 12 19

STATUTES:

Act of May 28, 1830, 4 Stat. 411, 412.
Sec. 3 20
Act of March 3, 1893, 27 Stat. 612, 645.
Sec. 15 20
Sec. 16 20
Act of June 28, 1898, 30 Stat. 495.
Sec. 11 21
Act of March 1, 1901, 31 Stat. 861.
Sec. 7 21
Sec. 44 22
Act of June 30, 1902, 32 Stat. 500.
Sec. 16 22
Act of April 26, 1906, 34 Stat. 137.
Sec. 19 .....7, 11, 22
Sec. 23 23
Act of May 27, 1908, 35 Stat. 312.
Sec. 1 23
Sec. 4 23
Sec. 8 24
Revenue Act of 1926, c. 27, 44 Stat. 9.
Sec. 302 (a) 3, 6, 26
Act of May 10, 1928, 45 Stat. 495, as amended by the Act of May 24, 1928, 45 Stat. 733.
Sec. 1 24
Sec. 3 24
Sec. 4 24
Act of January 27, 1933, 47 Stat. 777.
Sec. 1 25
Act of June 18, 1934, 48 Stat. 984 7
Act of June 26, 1936, 49 Stat. 1967 7

MISCELLANEOUS:

G. C. M. 16020, C. B. June, 1936, p. 78..... 11
GC:I:EWM A-281892, December 28, 1935..... 14

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A. M. LANDMAN, Superintendent of the Five Civilized Tribes, for Estate of JEANETTA BURGESS, Nee TIGER, Deceased Creek, Roll No. 5069, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

PETITION.

The petitioner, A. M. Landman, Superintendent of the Five Civilized Tribes, for the Estate of Jeanetta Burgess, nee Tiger, Deceased Creek, Roll No. 5069, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit, entered in the above cause, affirming a judgment of the United States Board of Tax Appeals, which found a deficiency against petitioner of Federal estate tax in the above-named estate.

STATEMENT.

Jeanetta Burgess, nee Tiger, a fullblood, restricted Creek Indian, died intestate on January 10, 1935. She left as her heirs a husband, seven children and three grandchildren, all of whom were fullblood, restricted Creek Indians. At her death she was seized of a restricted allotment of land having an agreed value of $3,000.00, Liberty Bonds having an agreed value of $227,243.41, and cash with the petitioner in the amount of $4,754.89. The Liberty Bonds represented the invested proceeds derived from the production of oil and gas from the allotment, all of which were restricted funds held by the Secretary of the Interior under the direct supervision and control of the petitioner (R. 15-16).

The respondent included in the gross estate of the decedent the value of decedent's allotment of land, Liberty bonds and cash, and determined a deficiency in the Estate Tax based thereon of $15,053.48 (R. 9). Petitioner appealed to the Board of Tax Appeals, contending (1) That the decedent did not have an interest in property within the meaning of Section 302 (a) of the Revenue Act of 1926, because the interest of the decedent in the property was so deleted by statutory restriction and governmental practice and regulations thereunder that the decedent, at the time of her death, had nothing to transfer but a hollow interest in the estate; and (2) that assuming decedent did have such an interest in property, the value of her allotted land and the income derived therefrom is exempt from the Federal estate tax by virtue of a series of treaties, agreements and acts of Congress, culminating in the Act of April 26, 1906, (34 Stat. 137, Sec. 19). The Board affirmed the determination of the Commissioner that decedent's estate was subject to the Federal Estate Tax, but reduced the deficiency to $14,766.68 due to the allowance of certain additional deductions from the gross estate (R. 14). The petitioner thereupon appealed to the Circuit Court of Appeals for the Tenth Circuit (R. 23). That Court affirmed the decision of the Board (R. 54).

SPECIFICATIONS OF ERROR TO BE URGED.

The Circuit Court of Appeals erred:

(1) In holding that this restricted Creek Indian who died January 10, 1935, had an interest in property within the meaning of Section 302 (a) of the Revenue Act of 1926.

(2) In holding that the value of the allotted land and the income derived therefrom of such Indian was not exempt from the Federal Estate Tax.

(3) In applying the same principles of taxation to the estate of this fullblood, restricted Indian as those applied to estates of white citizens under no restrictions.

REASONS FOR GRANTING THE WRIT.

(1) The question of whether the estate of a restricted Creek Indian is subject to the Federal estate tax is a highly important question of Federal law which has not been, but should be, settled by this Court. This case is one of first impression, and one to determine the liability to the Federal estate tax of a great number of similar estates of restricted Indians, involving in total a large sum of money. It concerns the construction of an agreement between the Creek Tribe of Indians and the United States, providing for tax exemption of their restricted lands, as well as the question of whether a restricted Indian has an interest in property within the meaning of the Revenue laws.

(2) The holding of the Court below conflicts in principle with the decisions of this Court in *Heckman* v. *United States*, 224 U. S. 413; *Mullen* v. *United States*, 224 U. S. 448; *Choate* v. *Trapp*, 224 U. S. 665; *English* v. *Richardson*, 224 U. S. 680; *Carpenter* v. *Shaw*, 280 U. S. 363; *Superintendent* v. *Commissioner*, 295 U. S. 418; and *United States* v. *Santa Fe Pac. R. Co.*, 62 S. Ct., 248.

(3) The question presents a long standing contest between the Treasury Department, represented by the Com-

missioner of Internal Revenue, who seeks to impose the tax, and the Interior Department, through the Superintendent of the Five Civilized Tribes, who seeks to protect the instrumentality chosen by the Government out of the Indians' own property for the care of the Indians, by avoiding imposition and collection of the tax which will eventually, if not very soon, destroy the entire instrumentality and make the Indian a charge upon the Government.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Tenth Circuit should be granted.

HUSTON THOMPSON,
OSCAR P. MAST,
Washington, D. C.,
Counsel for Petitioner.

January 27, 1942.